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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DALE E. ROBINSON,

Plaintiff and Appellant,

v.

JANE URE, as Judge, etc., et al.,

Defendants and Respondents.

F045261

(Super. Ct. No. 02AS07185)

OPINION

APPEAL from an order of the Superior Court of Sacramento County. Richard A. Haugner, Judge.

Dale E. Robinson, in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Louis R. Mauro, Assistant Attorney General, Kenneth R. Williams and Robert C. Nash, Deputy Attorneys General, for Defendants and Respondents.

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Appellant Dale E. Robinson challenges the order of the Sacramento Superior Court sustaining the respondents' demurrer without leave to amend. We will affirm the order.

PROCEDURAL AND FACTUAL SUMMARY

Robinson was arrested on September 25, 2000, and charged with one count of first degree burglary. Bail was set at $50,000 and Robinson was released on bail. Robinson failed to appear at his next court date and a bench warrant was issued.

Robinson turned himself in on November 4, 2000. On November 20, 2000, he requested that bail be reinstated; his request was denied. On January 5, 2001, Robinson again requested that bail be reinstated; his request again was denied.

On November 22, 2002, Robinson filed a complaint in Sacramento Superior Court requesting declaratory and injunctive relief. Robinson set forth two causes of action. The first cause of action alleged that the trial court applied a "no bail" policy to defendants, like Robinson, facing a third strike conviction, and the second cause of action alleged that a controversy had arisen with the sheriff's department regarding a "courtroom security policy."

Judges Ure and Bakarich filed a demurrer to Robinson's first cause of action. Robinson filed a response to the demurrer in which he admitted that the "no bail" policy he challenged was no longer in effect. On June 23, 2003, a hearing was held on the demurrer. The trial court sustained the demurrer without leave to amend. A notice of entry of order was served on June 27, 2003. No appeal was taken from this order.

On July 25, 2003, 35 current and former employees of the superior court (hereafter respondents) filed a demurrer to the first cause of action. Robinson filed a response, acknowledging that the bail policy he was challenging was no longer in effect but asserting that a "no bail" policy was capable of repetition because it could be reinstated at any time.

The trial court sustained the demurrer without leave to amend and dismissed the complaint as to the respondents. The order was signed on October 31, 2003, and Robinson appealed from this order only.

DISCUSSION

No Actual Controversy

The first cause of action in Robinson's complaint alleged that a controversy had arisen and existed regarding a "no bail" policy. The bail schedule in effect when the demurrer was filed, however, sets bail for defendants facing a possible third strike conviction at $1 million. Robinson acknowledged in the trial court that the bail schedule he purported to challenge was no longer in effect and that he was seeking a determination as to the validity of the former bail schedule.

Further, we are not certain that there ever was a "no bail" policy as contended by Robinson. Robinson was released on bail, even though he was facing a third strike conviction, but he failed to appear after his release. It was only after he failed to appear and a bench warrant issued that he was denied bail.

A declaratory relief action must present an actual controversy. (Code Civ. Proc., § 1060.) Here, the trial court was asked to rule on the constitutionality of a purported bail schedule that was no longer in effect and to enjoin the respondents from applying a bail schedule that no longer existed.

The settled duty of this court, as well as of all other judicial tribunals, "'is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132; *National Assn. of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 746.)

There was no justiciable controversy for declaratory relief purposes upon which the trial court could rule. (*Burke v. City etc. of San Francisco* (1968) 258 Cal.App.2d 32, 34.)

Issues Are Moot

Robinson also contends the case should be permitted to proceed to trial because the issue is capable of evading appellate review. He is incorrect.

"Although a case may originally present an existing issue … if, before decision is reached, it has, through acts of the parties or other cause, lost that existent character, it is rendered moot and may not be considered." (*National Assn. of Wine Bottlers v. Paul, supra,* 268 Cal.App.2d at p. 746.) Thus, "[w]hen it appears that a controversy … from which an appeal has been taken no longer exists, it is the duty of the court to dismiss the appeal." (*Bollotin v. Workman Service Co.* (1954) 128 Cal.App.2d 339, 342.) A case is moot when any ruling by this court "can have no practical impact or provide appellants effectual relief." (*Downtown Palo Alto Com. for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, 391.)

A decision on the merits of this case "can have no practical impact or provide appellant[] effectual relief." (*Downtown Palo Alto Com. for Fair Assessment v. City Council, supra,* 180 Cal.App.3d at p. 391.) Nevertheless, we have the inherent power to retain a case and decide it on its merits, even though it is moot, where the issues are important and of continuing interest. (*Burch v. George* (1994) 7 Cal.4th 246, 253, fn. 4; *Honig v. Doe* (1988) 484 U.S. 305, 317-323, 330.) "[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot." (*In re William M.* (1970) 3 Cal.3d 16, 23; see, e.g., *Liberty Mut. Ins. Co. v. Fales* (1973) 8 Cal.3d 712, 715-716; *County of Madera v. Gendron* (1963) 59 Cal.2d 798, 804.)

Robinson urges that this discretion be exercised in his case. We are not persuaded to exercise this discretion here. In our view, the issues specific to this case are not likely to recur. And, if the purported "no bail" policy is adopted, Robinson or other defendants

have the ability to challenge bail decisions expeditiously by way of a petition for writ of habeas corpus.

DISPOSITION

The order is affirmed.

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CORNELL, J.

WE CONCUR:

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VARTABEDIAN, Acting P.J.

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LEVY, J.